ber agrees to any amendments the society may make concerning its government or the transaction of its business, but not to amendments materially lessening the value of his insurance. This view fails to recognize that the member must realize that he is entering a mutual association, and that a partial sacrifice of his individual rights may often be necessary to preserve to him the benefit of its continued existence. On this reasoning other cases[5] seem to hold that the member agrees to any amendments the society sees fit to adopt. This is error at the other extreme. Prospective benefits for which he has given valuable consideration should not be wholly at the mercy of the majority. On the whole, neglecting language broader than the decisions require, it is believed that nearly all the cases may be reconciled as establishing the following middle view: That the member agrees to changes in the original contract except in so far as they alter amounts expressly named in the certificate. This construction seems best to accord with justice and the probable intention of the parties. The ordinary man would suppose himself secure in rights to definite sums specified on the face of the certificate, while regarding the right to benefits provided by the by-laws as a right to receive them subject to such changes as the good of the society as a whole demands. And the society in contracting would hardly demand greater latitude than this in adapting its rules to changes in its financial condition.

THE NATURE OF A PARENT'S RIGHT IN HIS CHILD. — The primitive conception of the family relation made the child the property of its father. The Roman law even placed its life at his disposal on the theory that he who gave life should have the power to take it.[1] The common law was more humane. But although the child was given separate property rights, and unnecessary acts of cruelty on the part of the father were illegal,[2] yet the duty of maintenance was established only by statute,[3] and within the last century the father had in England an absolute right to the custody of the child, which was not affected by the child's interests, nor forfeited by the father's misconduct.[4] Modern ideas are in sharp contrast with this ancient conception. In deciding custody cases, the courts have repeatedly stated that the only consideration is the interest of the child.[5] Text-writers have gone still further and advanced a theory of the parental relation which makes the parent's duties — to maintain, protect, and educate — fundamental. His rights to the service and custody of the child, to correct it and determine its education and religious training, are, on the other hand, regarded as merely incidental to his obligations, bestowed because necessary to their performance.[6]

There are, however, decisions whose correctness can hardly be questioned, which cannot be accounted for under this theory. Thus courts are frequently called upon to decide whether a child shall be intrusted to a poor and ignorant parent or to more prosperous relatives. If the interests of the child were, in truth, the only consideration, and the parent's rights merely

---

[5] Collected in Pain *v.* Doc. St. Jean Baptême, 172 Mass. 319.

[1] Cod. 8, 47, 10; 1 Bl. Com. 452.

[2] 1 Bl. Com. 453; Johnson *v.* State, 2 Humph. 283.

[3] 43 Eliz. c. 2.

[4] See Talfourd's act, 2 & 3 Vict. c. 54; Rex *v.* De Mandeville, 5 East, 221.

[5] People *v.* Mercein, 3 Hill (N. Y.) 399.

[6] Schouler Domestic Relations, 5th ed., 383.

incidental to his obligations, the child would often have been taken from its parent; yet this will never be done unless the parent is morally unfit to control his child.[7] Again, even after a parent has been deprived of the custody of his offspring and owes it no parental duties, the courts have repeatedly recognized his right of access to his child.[8] A recent New York case furnishes an extraordinary illustration of this tendency of the courts to recognize the independence of the parent's rights. The custody of children was taken from their aunt, a Protestant, and awarded to their grandmother, a Catholic, solely because the father was a Catholic. By the same decision the father's application for their custody was refused on the ground that his misconduct had forfeited his right to it. *Matter of Jacquet*, 40 N. Y. Misc. 575. The court clearly proceeded on the theory that a parent's rights are not merely incidental to his obligations, for, although the father was deprived of the custody of the children and relieved of his parental obligations, yet he was still conceded the right to determine their religious training.

It seems apparent that although the reaction against the barbarities of the old theory of the parental relation has led the courts to lay stress upon the rights of the child, they have in effect proceeded upon the theory that the rights of parent and child are respectively independent, springing separately from the fact of parentage. This view seems both legally sound and in harmony with the modern, civilized conception of the family relation.

REDUCTION OF BENEFICIAL INTEREST OF AN ASSIGNEE OF A TRUSTEE BECAUSE OF THE LATTER'S DEFALCATION. — If a trustee, who is also a beneficiary under the trust, commits a defalcation, the other beneficiaries may satisfy the default out of the trustee's interest.[1] If, however, before committing the default, the trustee has assigned his interest, a different question arises. In England, it appears to be settled that even in that case, the other beneficiaries may take in advance of the assignee.[2] In America, it seems to have arisen for decision only once;[3] then the English rule was adopted without qualification. How the question would be treated in new jurisdictions is difficult to determine.

That a trustee should be obliged to diminish his beneficial interest in favor of the other beneficiaries to the extent of his default is undoubtedly a salutary rule. The English cases say that he must be regarded as having anticipated the payment to himself of his share.[4] This is obviously a fiction. A better explanation would seem to be that the trustee should not be allowed to set up his own default in order to diminish the shares of the other beneficiaries. It is but another of those stringent but beneficent rules that are aimed at maintaining undeviating rectitude on the part of fiduciaries. A different proposition is presented, however, when the trustee has previously assigned his interest. Obviously the case is not covered by the English reasoning, for, as the beneficial interest is no longer his, the trustee cannot be regarded as having paid it. Nor, now that the interest to be diminished belongs to an innocent third person, can the other beneficiaries contend that the trustee will only suffer the consequences of his

---

[7] See Hanson *v.* Watts, 40 Ind. 170.

[8] Miner *v.* Miner, 11 Ill. 43.

[1] Jacubs *v.* Rylance, L. R. 17 Eq. 341.

[2] Doering *v.* Doering, 42 Ch. D. 203.

[3] Belknap *v.* Belknap, 87 Mass. 468.

[4] Jacubs *v.* Rylance, *supra*.